IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

SA.No. 296 of 1994(B)

AS.29/1988 OF SUB COURT, MANJERI,
OS.43/1981 OF MUNSIFF COURT,PERINTHALMANNA.
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APPELLANT/ APPELLANT/ PLAINTIFF:

V. SUBRAMANIAN, S/O. VADAKKEKARA ASARIKITTA,
RESIDING AT PANG AMSOM AND DESOM, PERINTHALMANNA TALUK,
MALAPPURAM DISTRICT.

BY ADV. SRI.T.V.ANANTHAN.

RESPONDENTS/ RESPONDENTS/ DEFENDANTS:
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1. **ILLIKKAL SUBRAMANIAN, S/O. RAMAN ALIAS ACHUTTY,**
   PANG AMSOM AND DESOM, PERINTHALMANNA TALUK,
   PANGU.P.O., MALAPPURAM DISTRICT.

2. **PALLITHODI RAJAN, S/O. VELAYUDHAN,**
   PANG AMSOM AND DESOM, PERINTHALMANNA TALUK,
   PANGU.P.O., MALAPPURAM DISTRICT.

BY ADV. SRI.T.A.RAMADASAN,
SRI.K.M.SATHYANATHA MENON.

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12/11/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

S.A .NO. 296 OF 1994

Dated 12th November 2007

J U D G M E N T

Plaintiff in O.S.43/1981 on the file of Munsiff court, Perinthalmanna is the appellant. Defendants are respondents. Appellant instituted the suit seeking recovery of possession of plaint schedule property with mesne profits on the strength of title. Plaint schedule property is 38 cents in survey No.426/1 of Kuruva village of Perinthalmanna Taluk. It admittedly originally belonged to Ponmala Devaswom. Appellant contended that he obtained the property as per oral lease from Devaswom and has been in possession of the property and also purchased jenm right from the Land Tribunal and there is a small house in the property thatched with grass and on 5/6/1981 first respondent trespassed into the plaint schedule property and reduced it in his possession and he has no right over the same and appellant is entitled to recover possession of the same with mesne profit at the rate of Rs.100/- per annum. First

respondent in his written statement contended that appellant has no right or title to the plaint schedule property and it was not obtained on lease by appellant and first respondent did not trespass into the property as alleged. It was contended that plaint schedule property along with other properties was obtained by Raman, father of respondent as per registered assignment deed No.2142/1939 and he has been in possession of the property effecting improvements and while he has been in possession of the property, 31½ cents in R.S.426/1 was entrusted to Kunhukuttan, his son and since then Kunhukuttan has been in possession of that property. On 1/7/1975 as per registered assignment deed Latha, wife of first respondent purchased that property from Kunhukuttan and remaining 35 cents in R.S.No.427/1 was assigned by father of first respondent to Edathadathil Ummer and while Ummer has been in possession of the property first respondent purchased it from Ummer as per assignment deed dated 19/3/1979 and respondent and his wife assigned the property in favour of Rajan who was subsequently impleaded as second respondent and therefore appellant is not entitled to the decree sought for. Second respondent in his written statement reiterated the contentions raised by first respondent

and contended that appellant is not entitled to the decree sought for. Learned Munsiff on the evidence of PW1, DW1, Exts.A1 to A8, B1 to B17 and C1 and C2 dismissed the suit holding that appellant did not establish his title to the plaint schedule property and respondents succeeded in establishing that they have title to the property. Appellant challenged decree and judgment before Sub court, Manjeri in A.S.29/1988. Learned Sub Judge on re-appreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the appeal.

2. Appeal was admitted formulating the following substantial questions of law.

> 1) When trial court found that purchase certificate obtained by appellant is not vitiated by fraud or collusion, whether courts below were correct in enquiring into the existence of the lease hold right, to decide the title.
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> 2) When the Commissioner has not verified the location of plaint property as per survey number whether courts below were justified in non suiting appellant for not identifying the plaint schedule property.

3. Learned counsel appearing for appellant was

heard. Though respondents originally appeared through counsel they subsequently did not appear.

4. Argument of learned counsel is that under Ext.A1 purchase certificate appellant has title to plaint schedule property and as purchase certificate is conclusive proof of title as provided under Section 72 K of Kerala Land Reforms Act courts below should have upheld the title of the appellant to the plaint schedule property. It was argued that when appellant has already purchased jenm right courts below should not have gone into the question whether lease set up by appellant is true and on the evidence title should have been upheld.

5. Ext.A1 purchase certificate shows that as per order in O.A.20134/1975 purchase certificate was granted in favour of appellant in respect of 38 cents in R.S.No.426/1 of Kuruva village. Property covered under Ext.A1 is the property lying within the following four boundaries. East and south lane, north water channel, west share of Karumambatta kudiyirippu. It only shows that landlord was Ponmala Devaswom. Appellant did not produce the order by which he was permitted to purchase jenm right. Ext.A1 shows that purchase certificate was granted originally in favour of Vannakkara Subramanian, Son of Asharikitta and the name was subsequently

corrected as Vadakkekara Subramanian. Even the correction is not seen attested. Appellant did not produce any material to establish that there was a lease in his favour as claimed in the plaint. Argument is that as purchase certificate was obtained, court need not go into that question. As rightly found by courts below under Ext.B13, Raman obtained lease hold right in respect of the property in 1939 itself. Subsequently under Exts.B2, B9 and B10 that right vested on first respondent and his wife which was assigned in favour of second respondent. Ext.B1 purchase certificate was also obtained by first respondent. When there is no material to prove that there was a lease prior to Ext.B13 lease in favour of appellant and when it is proved that under Ext.B13 the property was outstanding in the possession of Raman from 1939 onwards, appellant could not have obtained the property on oral lease as claimed in the plaint. It is for this reason courts below found that appellant has no title to plaint schedule property. More over, appellant did not identify plaint schedule property as the property covered under Ext.A1. Without establishing the title and identifying the property appellant cannot succeed in the suit. On the evidence courts below rightly found that

appellant did not prove his title and also did not identify the plaint schedule property. In such circumstance, I do not find any merit in the appeal. Appeal is dismissed. No cost.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.296 OF 1994

12th November 2007

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